

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





DOCKET NUMBER

74-1205 <sup>B</sup>

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

EMANUEL C. RUSSO, :

PLAINTIFF-APPELLANT :

VS. :

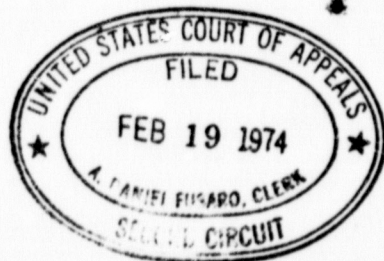
LOCAL UNION 676 OF THE :  
UNITED ASSOCIATION OF :  
PLUMBING AND PIPEFITTING :  
INDUSTRY OF THE UNITED STATES :  
AND CANADA, ET AL. :

DEFENDANTS-APPELLEES :

-----  
APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT  
-----

-----  
APPENDIX  
-----

NORMAN ZOLOT  
9 WASHINGTON AVENUE  
HAMDEN, CONN. 06518  
ATTORNEY FOR PLAINTIFF-APPELLANT



PAGINATION AS IN ORIGINAL COPY

DOCKET NUMBER

**74-1205**

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

EMANUEL C. RUSSO, :

PLAINTIFF-APPELLANT :

VS. :

LOCAL UNION 676 OF THE :  
UNITED ASSOCIATION OF :  
PLUMBING AND PIPEFITTING :  
INDUSTRY OF THE UNITED STATES :  
AND CANADA, ET AL. :

DEFENDANTS-APPELLEES :

---

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

---

APPENDIX

---

NORMAN ZOLOT  
9 WASHINGTON AVENUE  
HAMDEN, CONN. 06518  
ATTORNEY FOR PLAINTIFF-APPELLANT



### COMPLAINT

1. Jurisdiction of the United States District Court, District of Connecticut, arises pursuant to sections 102, 103 and Title IV of the Labor Management Reporting and Disclosure Act (LMRDA), 73 Stat.519, 29 U.S.C.A. sec. 401, 412,413,481 and 501.

2. The plaintiff Emanuel C. Russo is a member in good standing in defendant Local Union 676 of the United Association of Plumbing and Pipefitting Industry of the United States and Canada, within the meaning of section 29 U.S.C.A. 402(e), and its principal officer, Business Manager, within the meaning of section 29 U.S.C.A. 402(q).

3. The defendant, Local Union 676 is a labor organization within the meaning of section 29 U.S.C.A.(i) and subject to its terms, with its principal office at 74 Alexander Road, Milford, Connecticut.

4. The defendants John V. Maher, Ralph Clayton, Jan Merelle, Ronald Zimmerman, Richard Shailer, William Jasiunas and Kenneth Haas, are officers of defendant union within the meaning of section 29 U. S.C.A.402(e).

5. The affairs of the defendant union are conducted pursuant to the terms of its Constitution and By-laws, adopted April 6, 1971, and attached to the complaint as Exhibit A.

6. The defendant union was chartered by the United Association of Plumbing and Pipefitting Industry of the United States and Canada, pursuant to a decision of its General President dated November 12, 1970, under which a charter was issued to defendant union and requiring that within a period of four months thereafter, the defendant local union "shall adopt a constitution and by-laws, a dues structure and shall nominate and elect officers in accordance with

the provisions of the United Association Constitution for the nomination and election of local union officers," (Exhibit B, page 4) and also to employ "a full time paid officer." (Exhibit B, page 5).

7. The defendant local union complied with the conditions for the issuance of the charter on January 5, 1971 and plaintiff was elected the temporary business manager.

8. On January 20, 1971, the charter was issued and the Constitution and By-laws, adopted on January 5, 1971, were approved.

9. On February 8, 1971, notice of nominations, elections and by-law approval of Local 676 was sent to all members of defendant local union, which called for nominations to be held on March 2, 1971 and election and approval of the by-laws on April 6, 1971. (Exhibit C attached to the original)

10. Pursuant to Article VII and VIII of the Constitution and By-laws of Local 676 and the aforesaid notice, such nomination and election and approval took place on the dates scheduled, as a result of which the plaintiff was elected as Business Manager for a three year term effective April 6, 1971 and defendant officers named in paragraph 4 above were also elected for the same period.

11. Prior to April 1973, the plaintiff as Business Manager informed the membership that negotiations were being conducted with the National Automatic Sprinkler & Fire Control Association, and that counsel had advised him that since the defendants named in paragraph 4 above were supervisors within the meaning of the National Labor Management Relations Act of 1947, as amended, they could



not serve as members of the negotiating committee and that members who were supervisors or owners of businesses in the sprinkler fitting industry were not eligible to vote upon any collective bargaining agreement.

12. Despite the information contained in paragraph 12, the said defendants continued to serve on the negotiating committee and entered into an "agreement" which was submitted to the members of defendant union and voted upon by members, including supervisors and owners, in violation of the provisions of the Labor Management Relations Act of 1947, as amended, and section 178 of the Constitution of the United Association.

13. As a result of the foregoing action on April 12, 1973, the plaintiff instituted unfair labor practice charges against the named Association and requested by way of remedy that the defendants named in paragraph 4 above be barred from serving on the negotiating committee or voting upon any agreement.

14. After investigation, General Counsel for the National Labor Relations Board issued a complaint, case number 1-CA-9020 dated October 4, 1973, a copy of which is attached to the complaint as Exhibit D. Said complaint is waiting assignment for hearing at the present time. If the complaint is sustained, the defendants named in paragraph 4 and in paragraph 23 would be barred from serving on the negotiating committee, and participating in the election of persons to serve on said committee or voting on any agreement.

15. On August 21, 1973, defendant William Jasiunas, as recording secretary, gave notice of Special meetings for September 14th and October 2nd, 1973 to amend the Local 676 Constitution and By-

laws to change the nomination date for business manager and officers from March to November and the election date from April to December 1973. (Exhibit E which is attached to the complaint). The change was alleged due to the requirement of the Constitution of the United Association.

16. The purpose of such amendment was to remove the plaintiff from his office prior to the expiration of his term, April 6, 1974, and to undermine plaintiff's actions to secure the restoration of control of the union to non-supervisory members.

17. The amendments set forth in paragraph 15 were adopted at a Special Meeting held on October 2, 1973, at which supervisors and owners participated and voted on such amendments.

18. Thereafter on October 2, 1973, William Jasiunas, as recording secretary, notified the members of defendant local union that nominations for Business Manager and officers would be held at a Special Meeting to be conducted on November 6, 1973 and elections were to be held on December 4, 1973. On October 25, 1973, a further notice of a Special Meeting for October 25, 1973 to ratify the collective bargaining agreement was scheduled for November 6, 1973.

19. Plaintiff promptly protested at the nomination meeting against such action, but said protest was overruled. Supervisors and owners were present at this meeting, and nominated candidates for the Business Manager position and officers of the Local Union.

20. Plaintiff protested such action to the United Association.

21. Thereafter on December 4, 1973, an election was held. Supervisors and owners attended such meeting and participated in the e-



lection over plaintiff's protest.

22. Plaintiff then filed a protest with the United Association, which protest was processed as required by the Constitution of said United Association to the General President, whose representative this day informed plaintiff that his protests against the election and nomination were denied and that the defendant local union was free to install the Business Manager and officers elected at the December 4, 1973 meeting at the next meeting to be held January 8, 1973 at 8:00P.M. at Irish-American Home, Glastonbury, Conn.

23. Defendants named below are scheduled to be sworn in to office on January 8, 1974, as follows:

William Jasiunas, President  
Robert McNamara, Vice President  
Ralph Clayton :  
Michael Livingston : Executive Board  
Richard Shailer :  
Russell Oakes :  
Kenneth Haas, Financial Secretary  
Carl Grantmeyer, Recording Secretary  
Ronald Zimmerman, Business Manager

24. On November 20, 1973, the plaintiff filed an unfair labor practice charge against the defendants named in paragraphs 4 and 23 complaining that their activities in holding office, nominating candidates for office and accepting offices involving negotiations while supervisors was a violation of the National Labor Management Relations Act, as amended.

25. Plaintiff intends to file a complaint with the Secretary of Labor in support of his protests with respect to the conduct of nominations and elections, but such complaint will not prevent the defendants named in paragraph 23 above from taking office pending



such investigation.

26. The actions of the named individual defendants in amending the constitution and by-laws and conducting nominations and election and attempting to install new Business Manager and other officers prior to April 6, 1974 was and is motivated by said defendants desire to interfere with plaintiff's rights under section 101(a)(1) of the Act, to impose discipline upon him in violation of his rights under section 101(a)(5) of the Act and to remove him without just cause in violation of his rights under said section and Article IV of said Act, as well as his rights as a member under section 7 of the Labor Management Relations Act of 1947, as amended.

27. Said actions are arbitrary, malicious and made in bad faith to deprive the plaintiff of his rights as a member of Local 676, and his status as its Business Manager.

28. Said actions interfere with the jurisdiction and authority of the National Labor Relations Board and the rights of plaintiff under the act creating said Board, in that the nomination process and election was conducted at a time when the complaint was pending and contrary to applicable Board principles which would bar defendants named in paragraph 23 from assuming office.

29. If the defendants named in paragraph 23 were permitted to assume office prior to the completion of the NLRB proceedings, such action were result in a denial of plaintiff's rights under said Act.

30. The actions taken by the named defendants and threatened to be taken by them as described in paragraphs above have caused and continue to cause the plaintiff great mental pain and anguish, have

caused him humiliation at the hands of fellow members of the defendant union and embarrassment amongst his fellow business agents of the same International Union and other building trades.

31. A provision of the Constitution and By-laws of the Local Union permitting members who are supervisors within the meaning of section 3(1) of the National Labor Management Relations Act of 1947, as amended to nominate officers who will participate in the negotiations of a collective bargaining agreement and to vote for officers, including the Business Manager, who will participate in such negotiations and the administration of the collective bargaining agreement in contrary to public policy and law.

32. The plaintiff has no adequate remedy at law.

33. The plaintiff will suffer greater damage than the defendants if he is removed by the installation of a new Business Manager and officers.

WHEREFORE, the Plaintiff prays that this Court:

a. Enter a temporary injunction restraining the defendant union and the individual named defendants set forth in paragraphs 4 and 23 and anyone acting in concert with them, directly or indirectly, from installing a Business Manager and officers on January 8, 1974 or thereafter and from assuming the position of Business Manager or any office on said date for Local 676 other than that held on January 1, 1974 pending a final determination of the complaint before the National Labor Relations Board in case number 1-CA-9020.

b. Enter a temporary and permanent order restraining the de-



fendants from interfering with the rights of the plaintiff as Business Manager of Local 676 until his term shall expire on April 6, 1974 and until his successor shall be selected by a validly constituted membership of Local 676.

c. Enter a temporary and permanent order restraining the defendants from interfering with the plaintiff's rights as a member of Local 676 to prosecute complaints before the National Labor Relations Board without reprisals or from interfering with his performance of the duties of the Business Manager of Local 676 in any manner, directly or indirectly, including but not limited to the withholding of salary or expenses or other benefits due the Business Manager.

d. Enter a temporary and permanent order declaring the nomination conducted on November 6, 1973 and the election conducted on December 4, 1973 as contrary to public policy and null and void.

e. A declaratory judgment declaring that supervisors and owners who are members of Local 676 may not (1) nominate or vote upon any officer of Local 676 who participates in negotiations or the administration of the collective bargaining agreement or agreements between the Local 676 and any employer, employers or employer association or associations.

f. Award plaintiff damages of \$25,000 for loss of wages and expenses and pain and suffering, mental anguish, humiliation and embarrassment.

g. Award plaintiff attorney's fees to prosecute this action.

h. Provide such other relief as the court in its discretion may be just and proper.

Manager and (4) from removing the plaintiff as business manager for the same period.

---

ORDER

---

The Court, having reviewed the Verified Complaint in the above entitled matter and believing that there is a need for a maintenance of the status quo until the defendants may appear and defend said action in order to protect the rights of the plaintiff, hereby ORDERS that Local Union 676, United Association of Plumbing and Pipefitting Industry of the United States and Canada and the individual named defendants John V. Maher, Ralph Clayton, Jan Merelle, Ronald Zimmerman, Richard Shailer, William Jasinus, Kenneth Haas, Robert McNamara, Michael Livingston, Russell Oakes and Carl Grantmeyer refrain from:

(1) installing a Business Manager and officers on January 8, 1974 or thereafter and from assuming the position of Business Manager or other offices of Local Union 676 until a hearing on plaintiff's Motion for Temporary Injunction is heard by this court and disposed;

(2) from interfering with the rights of the plaintiff as Business Manager of Local 676 for the same period;

(3) from interfering with the rights of the plaintiff as a member of Local 676 to prosecute complaints before the National Labor Relations Board or interfering with the performance of his duties as Business Manager of Local 676 in any manner, directly or indirectly, for the same period, including but not limited to the withholding of salary or expenses or other benefits due the Business Manager; and

(4) from removing the plaintiff as Business Manager for the same period, and it is further ORDERED that plaintiff caused to be



served upon the defendants a copy of this temporary restraining order not later than January 10, 1974, together with a copy of the verified complaint and the Motion for Temporary Injunction, and that the said plaintiff and defendant appear before this Court on January 17, 1974 at 10:00 a.m. at the U. S. District Courthouse at New Haven, Connecticut, or at such date as may hereafter be established by this court for such purposes.

By the Court

Dated January 8, 1973.

---

MOTION FOR TEMPORARY INJUNCTION

The plaintiff by his counsel moves the Court for a Temporary Injunction against the defendant local union and the individual named defendants in the above entitled action directing them from (1) installing a Business Manager and officers on January 8, 1974 or thereafter and from assuming the position of Business Manager or any other office on said date or thereafter (other than that held on January 1, 1974) pending this court's hearing the plaintiff's Motion for Temporary Injunction and disposing of such motion; (2) from interfering with the rights of the plaintiff as Business Manager of Local 676 for the same period; (3) from interfering with the rights of the plaintiff as a member of Local 676 to present complaints before the National Labor Relations Board or interfering with the performance of his duties as Business Manager of Local 676 in any manner, directly or indirectly, for the same period, including but not limited to the withholding of salary or expenses or

EMANUEL C. RUSSO, Plaintiff

By \_\_\_\_\_  
Norman Zolot, His Attorney  
9 Washington Avenue  
Hamden, Conn. 06518

Dated: January 7, 1974.

VERIFICATION

I, Emanuel C. Russo, have read the foregoing complaint and facts alleged therein are true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
L.S.

Sworn to and subscribed to before me this 7th day of January, 1974, at Hamden, Connecticut

\_\_\_\_\_  
Norman Zolot  
Commissioner Superior Court

MOTION FOR TEMPORARY RESTRAINING ORDER

The plaintiff by his counsel moves the Court for a temporary restraining order against the defendant local union and the individual named defendants in the above entitled action directing them from (1) installing a Business Manager and officers on January 8, 1974 or any other office on said date or thereafter (other than that held on January 1, 1974) pending this court's hearing the plaintiff's Motion for Temporary Injunction and disposing of such motion; (2) from interfering with the rights of the plaintiff as Business Manager of Local 676 for the same period; (3) from interfering with the rights of the plaintiff as a member of Local 676 to prosecute complaints before the National Labor Relations Board or interfering with the performance of his duties as Business Manager of Local 676 in any manner, directly or indirectly, for the same period, including but not limited to the withholding of salary or expenses or other benefits due the Business



other benefits due the Business Manager and (4) from removing the plaintiff as business manager for the same period.

DEFENDANTS' MOTION TO DISMISS  
COMPLAINT AND DENY INJUNCTIVE RELIEF

Now come the Defendants in the above entitled matter and move this Honorable Court to Dismiss the complaint of the Plaintiff pursuant to Section 12B(1) and/or 12B(6) of the Federal Rules of Civil Procedure for the reasons stated in the attached "Defendants' Memorandum of Points and Authority in Support of Motion to Dismiss and Request for Denial of Injunctive Relief", or in the alternative deny injunctive relief for the reasons that the Plaintiff has failed to show:

1. Irreparable harm will occur if injunction not granted.
2. Probability of success on the merits.
3. That greater harm will be incurred by the Plaintiff if such relief is not granted than will be incurred by the Defendants if such relief is granted.

**MEMORANDUM OF DECISION  
ON DEFENDANTS' MOTION TO DISMISS**

This suit raises issues concerning the appropriate roles of the Secretary of Labor, the National Labor Relations Board, and a District Court with respect to disputes that implicate Titles I and IV of the Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §§ 411 et seq., and § 7 of the National Labor Relations Act (NLRA), 29 U.S.C. § 157. The suit was brought on January 8, 1974, by Emanuel Russo, who had previously been elected as business manager of the defendant union, Local 676 of the United Association of Plumbing and Pipefitting Industry of the United States and Canada. The officers of the union were also named as defendants. Jurisdiction is invoked under § 102 of the LMRDA, 29 U.S.C. § 412, to remedy alleged violations of plaintiff's rights secured by § 101(a)(1) and (5), 29 U.S.C. § 411(a)(1) and (5).

The complaint alleges a series of events that really constitute two distinct causes of action, the first concerning the plaintiff's claimed right to prevent the named individual defendants from taking office, and the second concerning the plaintiff's claimed right to prevent his



own removal from office. Local 676 was chartered by the United Association in 1970, on condition that it adopt a constitution and bylaws and nominate and elect officers in accordance with the constitution of the United Association. The Local endeavored to comply by adopting bylaws on January 5, 1971, which were approved by the United Association on January 20, 1971. Thereafter nominations and elections were held. On April 6, 1971, along with the officers, plaintiff was elected business manager for a three-year term commencing April 6, 1971.

During 1973, the negotiation committee of the union, which, as required by the union's bylaws, consists of the union's officers, conducted negotiations with a contractors' group, the National Automatic Sprinkler & Fire Control Association. Plaintiff protested to the union membership that the officers could not act as a negotiating committee because they were supervisors, and that any agreement reached would be invalid under the NLRA because of the supervisors' negotiating role. He also warned that any agreement would be invalid under the NLRA if supervisors participated in a vote approving it. Despite plaintiff's protests, the

negotiating committee reached an agreement with the contractors, which was approved by the union's membership in April, 1973. On April 12, 1973, plaintiff instituted unfair labor charges with the NLRB, complaining that supervisors had negotiated and voted to approve the agreement. Plaintiff's charges resulted in the issuance of a complaint by the Board's General Counsel on October 4, 1973. That complaint is currently awaiting assignment for hearing.

Events concerning plaintiff's status as an officer began on August 21, 1973, when defendant Jasiunas, the union's recording secretary, gave notice of special meetings called to amend the union's constitution and bylaws. Proposed for change were the months for nominating and electing officers and the business manager. Nominations were to be held in November instead of March, and elections in December, instead of April. The changes were approved at a membership meeting held October 2, 1973. Pursuant to the amended bylaws, nominations for officers and business manager were held on November 6, 1973, and elections on December 4, 1973. Plaintiff was nominated for business manager, but was defeated in a secret ballot election by a vote of 61 to 13. The successful candidates for officers and business manager are defendants in this suit.



On January 8, 1974, plaintiff filed this suit and obtained a temporary restraining order, barring the defendants from being installed in office. On January 17, 1973, a hearing was held on plaintiff's motion for a preliminary injunction. Testimony and exhibits were presented by plaintiff. Because time did not permit presentation of the defendants' evidence, the parties agreed to have the temporary restraining order extended pending disposition of defendants' motion to dismiss on the understanding that if the motion were denied, defendants would have an opportunity to present evidence before decision was reached on plaintiff's motion for a preliminary injunction.

Plaintiff's first cause of action concerns his challenge to the right of the individual defendants to take office. His argument proceeds from the undisputed premise that interference by supervisors in the collective bargaining process violates rights of union members protected by § 7 of the NLRA. NLRB v. Employing Bricklayers' Association of Delaware Valley and Vicinity, 292 F.2d 627, 629 (3d Cir. 1961); Local 636 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO v. NLRB, 287 F.2d 354 (D.C. Cir. 1961); Nassau & Suffolk Contractors' Association, Inc.,

118 N.L.R.B. 174, 183-84 (1957). Plaintiff contends that the defendants who were elected to office are supervisors. He does not challenge the right of supervisors in general to hold office. However, he challenges the right of the individual defendants to become officers of the defendant union because this union's bylaws require the officers to constitute the union's negotiating committee. Plaintiff also challenges the individual defendants' right to become officers on the ground that supervisors participated in their election and in the election of a business manager who has continuing collective bargaining responsibilities.

The critical issue is whether the rights plaintiff alleges have been infringed are rights protected by § 101(a)(1) of the LMRDA. If so, this Court can proceed to consider the merits of the claims, but if the role of supervisors, either as officer-negotiators or as electors of negotiators, impairs only rights protected by § 7 of the NLRA or Title IV of the LMRDA, then relief must be sought from either the NLRB, San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959), or the Secretary of Labor, Calhoon v. Harvey, 379 U.S. 134 (1964).



Section 101(a)(1) assures union members "equal rights and privileges" to nominate candidates and vote in union elections. Calhoon emphasized that the essential protection afforded is against discrimination among union members in their exercise of the franchise, rather than rules concerning who is eligible for election. Even the concurring opinion wanted § 101(a)(1) broadened only to include rules that distort the basic democratic process. Calhoon v. Harvey, supra, 379 U.S. at 147. This Circuit has also emphasized that § 101(a)(1) is properly invoked to protect against union action that is "part of a purposeful and deliberate attempt . . . to suppress dissent within the union." Schonfeld v. Panza, 477 F.2d 899, 904 (2d Cir. 1973). The values to be protected are those relevant to labor union democracy, rather than to union-management labor relations.

Plaintiff does not allege any discrimination among union members, nor, in this first cause of action, any stifling of free speech or dissent.

Plaintiff does not have a right protected by § 101(a)(1) to prevent the installation of alleged supervisors as officers, even though their activity as contract negotiators may well give rise to an unfair labor practice within the Board's jurisdiction. Plaintiff fears the Board's jurisdiction may be unequal to the task, since, as he contends,

the Board may have no authority to remove defendants as officers. But the Board clearly has authority to prevent the enforcement of any agreement improperly negotiated because of supervisor participation, and may well have authority to order the officers (if their supervisor status is established) to refrain from subsequent negotiations. If this occurs, the bylaw provision constituting the officers as negotiators will simply have to give way to superior requirements of federal law. Even if the Board's authority cannot be exercised so prophylactically, such deficiency does not create a corresponding increase in a district court's authority under § 101(a)(1). If presently existing remedies are inadequate, as plaintiff fears, the solution must be supplied by Congress.

Nor does plaintiff have a right protected by § 101(a)(1) to prevent the installation of officer-negotiators who have been elected by alleged supervisors. If plaintiff's vote for himself and his choice of officers was diluted because supervisors were improperly permitted to vote, the remedy must be sought from the Secretary of Labor pursuant to Title IV. Cf. Schonfeld v. Raftery, 359 F.Supp. 380 (S.D. N.Y. 1973).<sup>1/</sup>



Plaintiff's second cause of action challenges the defendants' action in precipitating an election that resulted in his replacement as business manager three months before the expiration of the term for which he was elected. He asserts this action violated his rights protected by § 101(a)(1) and (5), the latter guarding against discipline without adequate procedural protection. His factual allegations appear more designed to assert denials of a free speech right protected by § 101(a)(2) or a right to initiate action before an administrative agency, protected by § 101(a)(4). However construed, the claim is not adequate to invoke the protection of § 101.

In the first place, it is somewhat doubtful whether § 101, enacted to promote union democracy, can ever be invoked as protection against a special election, even if the election is called with the specific motivation of voting an elected official out of office. Political scientists generally view initiative and recall procedures as providing more, not less, democracy. In this case, unlike Schonfeld v. Penza, supra, plaintiff was not disqualified from seeking office at the specially called election.<sup>2/</sup>

Secondly, plaintiff's claim encounters the obstacle that the specially called election was at least in conformity with, if not required by, the United Association's constitution. That constitution (§ 130(a)) specifies that nominations for officers of local unions shall be held in November or May, and elections in December or June. Having elected officers in April, 1971, the local union was certainly entitled to select the November-December option, since the May-June option would have resulted in no elections within a three-year interval, in violation of Title IV, 29 U.S.C. § 481(b).

Plaintiff contends that the United Association was not pressing to have the local union change its election timetable. However, a change that does in fact conform to the lawful rules of the parent body does not deny plaintiff any federally protected rights, even if, as plaintiff alleges, defendants were motivated to bring their bylaws into conformity in the hope that a December election would result in plaintiff's defeat.

Thirdly, § 101 "gives rise to no rights in the removed official as an official under the Act." Schonfeld v. Penza, supra, 477 F.2d at 904 (emphasis original). The cases upholding an ousted officer's claim under § 101 have involved a removal from office and usually an exclusion from holding office. Schonfeld v. Penza, supra; Grand Lodge of Int'l Assn. of Machinists v. King, 335 F.2d 340 (9th Cir. 1964);



Salzhandler v. Caputo, 316 F.2d 445 (2d Cir. 1963); DeCampi v. Greeley, 293 F.Supp. 746 (D. N.J. 1968). Since plaintiff was eligible for nomination and election under the revised election timetable of the amended bylaws, his basic claim is for protection "as an official" for the balance of the three-year term that was prematurely ended by his election defeat. While plaintiff does allege that the bylaw amendment that led to the December election was a retaliatory tactic that impaired his free speech rights, there are no allegations of the type of deliberate and long-standing suppression of free speech within the union that Schonfeld v. Penza, supra, indicated would invoke § 101(a)(2) protection. And it has consistently been held that § 101(a)(5) does not afford protection against removal from union office, even by summary administrative action, much less by election. Grand Lodge of Int'l Assn. of Machinists v. King, supra, 335 F.2d at 343 and n. 7.

Apart from federal law and despite the change in union bylaws, plaintiff may well have a valid claim that he was improperly denied the final three months of his term of office as business manager. In amending the bylaws, the union made no transitional provision to specify whether the old officers would have their original terms abbreviated or

the new officers would serve abbreviated terms. Moving the election date back from April to December obviously meant that one group or the other would serve less than full three-year terms,<sup>3/</sup> or that three-year terms would continue to commence in April, even though elections were in December. Defendants seem to assume that a December, 1973, election automatically required a shortening of the terms of incumbent officers. But plaintiff can contend with equal, if not greater logic, that since the local union's bylaw provision specifying three-year terms was not amended, he had a right to remain in office until April 6, 1974. Moreover, § 130(e) of the United Association's constitution provides that the length of a term remains intact, in the event an election date is advanced for certain purposes.

Whatever the merit of plaintiff's claim in this regard, it arises solely under the constitution and bylaws of the United Association and the local union, and is therefore a state law claim over which this Court lacks jurisdiction.<sup>4/</sup> Since there has not been a full development of the merits of the claims alleged to be federally cognizable, it is not appropriate to adjudicate the state law claim in the exercise of pendent jurisdiction.



Accordingly, the complaint will be dismissed for failure to state a claim upon which relief can be granted, and the temporary restraining order will be vacated. Judgment will be stayed and the temporary restraining order continued in effect until 5:00 p.m., February 11, 1974, to permit plaintiff to apply to the Court of Appeals for a stay pending appeal.

Dated at New Haven, Connecticut, this 7th day of February, 1974.

Jon O. Newman  
Jon O. Newman  
United States District Judge

#### FOOTNOTES

1/ Even Judge Lasker's opinion upholding the sufficiency of the complaint in Schonfeld v. Baffery, 335 F.Supp. 846 (S.D. N.Y. 1971), conceded that Title IV procedures are more likely appropriate if a complaint, challenging dilution of voting power, seeks relief with respect to a particular election.

2/ In DeCampli v. Greeley, 293 F.Supp. 746, 752 (D. N.J. 1968), which upheld a discharged union officer's Title I claims, the court specifically distinguished Sheridan v. United Brotherhood of Carpenters, 306 F.2d 152 (3d Cir. 1962), which rejected such a claim, on the ground that in Sheridan the decision to oust the officer was ultimately submitted to the union membership for decision, whereas in DeCampli, the decision was made by the union president.

3/ The bylaw change did not even specify whether the date was being moved back to the December preceding April, 1974, or ahead to the following December. However, the union is certainly entitled to construe its own bylaw to mean the earlier December, a reading that avoids a conflict with the three-year limitation of 29 U.S.C. § 481(b).

4/ Possibly, as defendants appear to contend, any complaint by plaintiff in this regard must be presented to the Secretary of Labor to secure redress under Title IV. This is not necessarily so. While Title IV does require that elections be held "in accordance with the constitution and bylaws" of a union, 29 U.S.C. § 481(e), plaintiff, in this portion of his complaint, is not challenging the conduct of an election, but the action of a union in installing newly-elected members prior to what he alleges is the lawful expiration date of his three-year term.



---

---

O R D E R

---

This action was brought by complaint dated January 7, 1974 seeking a temporary restraining order and temporary injunction, to which, on January 10, 1974 defendants filed a motion to dismiss for want of jurisdiction.

The court having heard the parties, and being of the opinion that said complaint fails to state a claim upon which relief can be granted, and the temporary restraining order issued January 7, 1974 should be vacated, it is ORDERED:

Defendants' motion to dismiss is granted and judgment to be entered for defendants, and the restraining order issued January 7, 1974 is vacated, provided, however, that this judgment and the temporary restraining order shall be continued in effect until 5:00 P.M. February 13, 1974, to permit plaintiff to apply to the Court of Appeals for a stay pending appeal.

Dated at New Haven, Connecticut this 11th day of February, 1974.

19) Jon O. Newman

Jon O. Newman

United States District Judge

## INDEX

	<u>Page</u>
COMPLAINT	1
MOTION FOR TEMPORARY RESTRAINING ORDER	11
TEMPORARY RESTRAINING ORDER	9
MOTION FOR TEMPORARY INJUNCTION	10
DEFENDANTS' MOTION TO DISMISS COMPLAINT AND DENY INJUNCTIVE RELIEF	12
MEMORANDUM OF DECISION ON DEFENDANTS' MOTION TO DISMISS	13
ORDER	26
EXHIBIT A - UNION CONSTITUTION AND BY-LAWS	26A
EXHIBIT D- COMPLAINT ISSUED BY THE GENERAL COUNSEL, N.L.R.B. CASE NO. 1-CA-9020	28



**EXHIBIT A**  
**LOCAL UNION 676 CONSTITUTION AND BY-LAWS**

\*\*\*\*\*

**ARTICLE V**

- A. The officers of Local Union No. 676 shall be the following:  
President, Vice President, Business Manager, Financial  
Secretary-Treasurer, Recording Secretary, Executive  
Board (5) members, Examining Board (5) members, Finance  
Committee (3) members and Inside Guard.
- B. The President and Business Manager shall be members with  
voice, but without vote, of all Committees and Boards. The  
Vice President shall be Chairman, with voice and vote, of the  
Executive Board, and shall be a member with voice but no  
vote of all other Committees and Boards.
- C. The election of all officers named above shall be by secret  
ballot and all officers shall be elected for a term of 3 years  
except as to the members of those committees hereinafter  
set forth. One nominee for one office shall be declared  
unanimously elected by Recording Secretary at election.
- D. Vacancies shall be filled temporarily by appointment of the  
Executive Board until an election may be held after proper  
notice to the membership. The election shall be by secret  
ballot at a Special Called Meeting for that purpose.

\*\*\*\*\*

**ARTICLE VII**

**NOMINATION OF OFFICERS**

Nominations for Officers shall be held at a Special Called Meeting  
during the month of March. All nomination for officers must be  
accepted by the proposed candidate within the specified time. All  
nominations shall be closed at this meeting.

**ARTICLE VIII**

The election of officers for Local Union No. 676 shall be held  
at a Special Called Meeting of the membership during the month  
of April. Whenever there are more than two (2) candidates for  
a single office, there shall be a run-off election for the two highest,  
providing that the highest shall not have more than 51% of the votes  
cast. All members of the Union eligible to vote shall receive  
notice of the election at least 15 days prior to the election date.

## ARTICLE IX

\*\*\*\*\*

- B. Any member of this Local Union engaged in the Automatic Sprinkler Industry holding an Executive position as owner, co-owner or contractor shall be ineligible to accept any office of the Local Union as defined in Section 186 of the United Association Constitution.
- C. All nominees for office and other positions shall, upon nomination, execute a statement that they are not disqualified to hold office under Section 504 of the Labor-Management Reporting and Disclosure Act of 1959.

## ARTICLE X

- A. Every member in good standing in the Local Union shall have the right to nominate, vote for or otherwise support the candidate of his choice. Good standing shall be defined as, all dues paid monthly in advance, no outstanding fines or assessments and attendance at six (6) meetings of the Local Union a year.

\*\*\*\*\*

## ARTICLE XIV

### NEGOTIATION COMMITTEE

- A. The Negotiation Committee, except for fabricating shops, shall be composed of seven (7) journeymen, those being the President, Business Manager and members of the Executive Board. They shall have power to meet and negotiate and sign agreements, and any other matters as deemed by the membership of Local Union 676 requiring negotiations. No agreement shall be valid until presented to and ratified by the membership of Local Union No. 676 at a specially called meeting.



**EXHIBIT D**  
**COMPLAINT ISSUED BY THE NATIONAL LABOR RELATIONS**  
**BOARD'S GENERAL COUNSEL, Case No. 1-CA-9020**

\*\*\*\*\*

12. Since on or about February 1, 1973, Respondent Association unlawfully assisted, supported, and interfered with the administration of the Union in that:

(a) Since on or about February 1, 1973, during negotiations for a new contract between the Union and Respondent Association, Respondent Association permitted and caused the following representatives, agents, and supervisory personnel of its employer-members and of the MCAC's employer-members to participate as representatives and agents of the Union at said negotiations:

John Maher - Union President and Union Negotiator and Area Supervisor for Acme Viking Fire Protection Corp.

Ralph Clayton - Union Vice President and Union Negotiator and Area Supervisor for Foskett & Bishop

William Jasiunas - Union Recording Secretary and Union Negotiator and Area Supervisor for Otto Contracting Company

Richard Shailer - Union Executive Board Member and Union Negotiator and Job Foreman for Acme Viking Fire Protection Corp.

Jan Morello - Union Executive Board Member and Union Negotiator and Area Supervisor for Morris A. Fierberg Co.

(b) On or about April 10, 1973 Respondent Association permitted following and caused the / representatives, agents, and supervisory personnel of its employer-members and of the MCAC's employer-members

to attend and participate in a membership meeting of the Union and to vote and to urge and direct those employees in the unit described above in Paragraph 8 who were present for this meeting to vote for ratification

of a contract negotiated under the circumstances and conditions of Paragraph 12(a):

Bernard Beck, Jr.	- Area Supervisor for M.J. Daly Company
Raymond C. Roberts	- Area Supervisor for Standard Sprinkler Corp.
John V. Maher	- Area Supervisor for Acme Viking Fire Protection Corp.
Donald Giguere	- Area Supervisor for Grinnell Fire Protection System
Theodore Oberdick	- Area Supervisor for James V. Ursini Company
Jan Morello	- Area Supervisor for Morris A. Fierberg Co.
Carroll B. Cully	- Treasurer, Secretary, Director for Hartford Automatic Sprinkler
Louis J. Fox, Jr.	- Vice President and Director for Hartford Automatic Sprinkler
Edward Polowski	- Director for Hartford Automatic Sprinkler
Joseph Litwinas, Jr.	- Director for Hartford Automatic Sprinkler

(c) On or about April 12, 1973, Respondent Association permitted and caused the same representatives, agents, and supervisory personnel of its employer-members and of the MCAC's employer-members as named in Paragraph 12(a) to participate in and to execute as representatives and agents of the Union a new contract agreement between the Union and Respondent Association.

13. By reason of the acts described above in Paragraphs 12(a), (b), and (c), the new agreement described above in Paragraphs 12(a), (b), and (c) was negotiated, ratified, and executed under such coercive conditions that such acts are in violation of the Act, that such acts interfere with, restrain and coerce the employees in the unit described above in Paragraph 8, and that this new contract should be set aside.



14. Since on or about April 12, 1973, the Union requested Respondent Association to bargain collectively in respect to rates of pay, wages, hours of employment or other conditions of employment with the Union as the exclusive representative of all the employees of employer-members of Respondent Association and of MCAC in the unit described above in Paragraph 8.

15. On or about April 16, 1973 and at all times thereafter, Respondent Association did refuse and continues to refuse to bargain collectively with the Union as the exclusive representative of all the employees in the unit described above in Paragraph 8.

16. By the acts described above in Paragraphs 12 and 13, Respondent Association did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(2) of the Act.

and 15,  
17. By the acts described above in Paragraphs 14 / Respondent Association did engage in and is engaging in unfair labor practices within the meaning of Section 3(a)(5) of the Act.

18. By the acts described above in Paragraphs 12, 13, 14 and 15 and by each of said acts, Respondent Association did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

19. The activities of Respondent Association, described above in 15, Paragraphs 12, 13, 14 and/ occurring in connection with the operations of Respondent Association, described above in Paragraphs 3 and 4, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

20. The acts of Respondent Association, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (2) and (5), and Section 2(6) and (7) of the Act.



